

Section 9006 - Renewable Energy Systems/Energy Efficiency Improvement Program

4280-B regulations

4280.115 - Construction planning and performing development - All work is performed under a written contract

(a) Technical services – Applicants are responsible for providing engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services must be provided by the applicant's "in house" engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the state of where the facility is to be constructed.

(b) Design policies – Facilities will meet the requirements of 1780.57 (b), (c), (d), and (o). **(See attached)** Final plans and specs must be reviewed and concurred with by the Agency prior to start of construction.

(c) Owner's Accomplishing Work – In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of 1780.67. **(See attached)** For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owners work and accept it. *Owners are not eligible for payment for their own work* as it is not an eligible project cost.

(d) Equipment Purchases – Equipment purchases < than \$200,000 will not require a performance and payment bond, unless required by the applicant, as long as the contract purchase is a Lump Sum payment and the manufacturer provides the required warranties on the equipment as outlined in Appendices A and B, paragraph (i). Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

	(e) Simple Contract Method	(f) Design Build Contracts The same person or entity provides design and engineering work as well as construction and/or installation.	Contract Method
Size of Contract	<p>< \$200,000</p> <p>Design build method may be used under this method.</p> <p>Typically used for small projects with a contract not greater than \$200,000.</p> <p>All construction work will be performed under a written contract.</p>	<p>< \$200,000</p> <p>Follow (e) Simple Contract Method.</p> <p>> \$200,000</p> <p><u>Agency prior concurrence</u> must be obtained and the following requirements apply. (1780-C regulations needed)</p> <p>See concurrence requirements below.</p>	<p>> \$200,000</p> <p>and is not design/build method</p> <p>(1780-C Regulations needed)</p>
Reimbursement	<p>Typically a lump sum payment upon completion of work.</p> <p>Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction contract (1924-6), or other Agency approved contract.</p>	<p>Typically a lump sum payment upon completion of work.</p> <p>Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction Agency approved contract.</p>	<p>Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction Agency approved contract.</p>
Concurrence requirements	<p>The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.</p>	<p>If the contract is greater than \$200,000 – the applicant will request Agency concurrence for a design-build project by providing the Agency with the following information (i) through (viii):</p> <p>(i) The owner's written request to use the design/build method with a description of the proposed method.</p> <p>(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a non-technical (see more on the next page)</p>	<p>The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.</p>

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Concurrence requirements (cont'd)		<p>(ii cont'd) statement summarizing the work to be performed by the contractor and the results expected, and a propose construction schedule showing the sequence in which the work is to be performed.</p> <p>(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract as well as compliance with all Federal, State, and local requirements effective on the contract execution date.</p> <p>(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.</p> <p>(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.</p> <p>(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.</p> <p>(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.</p> <p>(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.</p> <p>(2) Agency concurrence of design-build method. The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method.The agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.</p>	

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Contracting Requirements Threshold	For contracts > \$100,000, certain federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.		Procurement method shall comply with the requirements of 1780.72, 1780.75, and 1780.76
Forms Used	1924-6 “Construction Contract” or other Agency approved contract must be used.	AIA form A191 “Standard Form of Agreement Between Owner and Design/Builder” should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work.	AIA form A101 “Standard Form of Agreement Between Owner and Contractor” or EJCDC form C-521 “Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition” should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work.
Contract provisions	(i) The contract sum,	The contract sum,	The contract sum,
	(ii) The dates for starting and completing the work,	The dates for starting and completing the work,	The dates for starting and completing the work,
	(iii) Amount of liquidated damages to be charged,	Amount of liquidated damages to be charged,	Amount of liquidated damages to be charged,
	(iv) The amount, method, and frequency of payment,	The amount, method, and frequency of payment,	The amount, method, and frequency of payment,
	<i>(v) Whether or not surety bonds will be required. If not, a latent defects bond may be required.</i>	<i>Surety must meet requirements of 1780.75 (c).</i>	<i>Surety must meet requirements of 1780.75 (c).</i>
	(vi) The requirement that changes or additions must have prior written approval of the Agency,	The requirement that changes or additions must have prior written approval of the Agency,	The requirement that changes or additions must have prior written approval of the Agency,
	(vii) Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1).	Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1),	Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1),
		<i>Contract review and concurrence per 1780.61(b),</i>	<i>Contract review and concurrence per 1780.61(b),</i>
		<i>Owner's contractual responsibility as per 1780.68,</i>	<i>Owner's contractual responsibility as per 1780.68,</i>
		<i>Further contract provisions as per 1780.75.</i>	<i>Further contract provisions as per 1780.75.</i>

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Surety	<p><i>Surety must meet requirements of 1780.75 (c).</i></p> <p>--Surety will be required and made part of the contract if the applicant requests it, or if the contractor requests partial payments for construction work.</p> <p>--If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety.</p> <p>--In cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove its merit, the loan officer may require a latent defects bond to cover the work.</p>	<p><i>Surety must meet requirements of 1780.75 (c).</i></p> <p><u>Per Form 4280-2 Grant Agreement –</u></p> <p>Grantee will, for construction contracts in excess of \$100,000, provide performance and payment bonds for 100 percent of the contract price.</p>	<p><i>Surety must meet requirements of 1780.75 (c).</i></p> <p><u>Per Form 4280-2 Grant Agreement –</u></p> <p>Grantee will, for construction contracts in excess of \$100,000, provide performance and payment bonds for 100 percent of the contract price.</p>
Equal Opportunity	<p>Required language involving contracts or subcontracts > \$10,000.</p> <p>The required language is in the 1924-6 contract. If this form is not used, such language must be made a part of the contract.</p>	<p>Required language involving contracts or subcontracts > \$10,000.</p>	<p>Required language involving contracts or subcontracts > \$10,000.</p>
Obtaining bids and selecting a contractor	<p>(i) The applicant may select a contractor and <u>negotiate a contract</u> or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.</p> <p>(ii) When a <u>price has already been negotiated</u> by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provides a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.</p> <p>(iii) When an applicant has proposed development with <u>no contractor in mind, competition will be required</u>. The applicant must obtain bids from as many qualified contractors, dealers or trades people as feasible depending on the method and type of construction.</p> <p><i>(See more on the next page)</i></p>	<p><i>The applicant may select a contractor based on competitive sealed bids, competitive negotiation or noncompetitive negotiation as described in 1780.72 (b), (c), or (d).</i></p>	<p><i>The applicant may select a contractor based on competitive sealed bids, competitive negotiation or noncompetitive negotiation as described in 1780.72 (b), (c), or (d).</i></p>

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Obtaining bids and selecting a contractor (cont'd)	<p>(iv) If the award of the contract is by competitive bidding, RD form 1924-5 "Invitation for Bid (Construction Contract)," or another similar Agency approved invitation bid form containing the requirements of 1901-E may be used.</p> <p>All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder.</p> <p>When applicable, copies of form 1924-6 and 400-6 "Compliance Statement" should be provided to prospective bidders.</p>		
Awarding the Contract	<p>The applicant, with the assistance of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation.</p> <p>The applicant will select and notify the lowest responsible bidder.</p> <p>The contract will be awarded using Form 1924-6 or similar Agency approved document.</p>		<p>Applicants awarding contracts must comply with 1780.70 (h).</p> <p>Applicants awarding contracts prior to filing an application must comply with 1780.74.</p>
Final Payments	<p>Prior to making final payment when a surety bond is not used, RD will be provided with RD form 1924-9 "Certificate of Contractor's Release" and RD form 1924-10 "Release of Claimants" executed by all persons who furnished materials or labor in connection with the contract.</p> <p>The applicant should furnish the contractor with a copy of RD form 1924-10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.</p>		<p>Contract administration must comply with 1780.76. If another Federal or State agency is providing funding and requires oversight of inspections, change orders, and pay requests, the loan official may accept copies of their reports or forms as meeting oversight requirements of Rural Development.</p>

Exceptions for Simplified Application Grant Projects with total eligible project costs of \$200,000 or less.
4280.109 (a) (b)

(3) Project development

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for all the overall successful completion of the project including any work done by the grantee, or

(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee or borrower serves as the prime contractor will need to secure the services of an independent professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(4) Project completion – The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.